

FEDERAL RESERVE TRANSPARENCY ACT OF 2012

JULY 17, 2012.—Ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 459]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 459) to require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States before the end of 2012, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views	2
Section-by-Section	4
Explanation of Amendments	5
Committee Consideration	5
Application of Law to the Legislative Branch	5
Statement of Oversight Findings and Recommendations of the Committee	5
Statement of General Performance Goals and Objectives	5
Federal Advisory Committee Act	6
Unfunded Mandate Statement	6
Earmark Identification	6
Committee Estimate	6
Budget Authority and Congressional Budget Office Cost Estimate	6
Changes in Existing Law Made by the Bill, as Reported	7
Minority Views	10

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Reserve Transparency Act of 2012”.

SEC. 2. AUDIT REFORM AND TRANSPARENCY FOR THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) **IN GENERAL.**—Notwithstanding section 714 of title 31, United States Code, or any other provision of law, an audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) of such section 714 shall be completed within 12 months of the date of enactment of this Act.

(b) **REPORT.**—

(1) **IN GENERAL.**—A report on the audit required under subsection (a) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to the Speaker of the House, the majority and minority leaders of the House of Representatives, the majority and minority leaders of the Senate, the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate, and any other Member of Congress who requests it.

(2) **CONTENTS.**—The report under paragraph (1) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(c) **REPEAL OF CERTAIN LIMITATIONS.**—Subsection (b) of section 714 of title 31, United States Code, is amended by striking all after “in writing.”

(d) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 714 of title 31, United States Code, is amended by striking subsection (f).

SEC. 3. AUDIT OF LOAN FILE REVIEWS REQUIRED BY ENFORCEMENT ACTIONS.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct an audit of the review of loan files of homeowners in foreclosure in 2009 or 2010, required as part of the enforcement actions taken by the Board of Governors of the Federal Reserve System against supervised financial institutions.

(b) **CONTENT OF AUDIT.**—The audit carried out pursuant to subsection (a) shall consider, at a minimum—

(1) the guidance given by the Board of Governors of the Federal Reserve System to independent consultants retained by the supervised financial institutions regarding the procedures to be followed in conducting the file reviews;

(2) the factors considered by independent consultants when evaluating loan files;

(3) the results obtained by the independent consultants pursuant to those reviews;

(4) the determinations made by the independent consultants regarding the nature and extent of financial injury sustained by each homeowner as well as the level and type of remediation offered to each homeowner; and

(5) the specific measures taken by the independent consultants to verify, confirm, or rebut the assertions and representations made by supervised financial institutions regarding the contents of loan files and the extent of financial injury to homeowners.

(c) **REPORT.**—Not later than the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress containing all findings and determinations made in carrying out the audit required under subsection (a).

Amend the title so as to read:

A bill to require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States, and for other purposes.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 459 empowers the Government Accountability Office (GAO), the investigative arm of Congress, to conduct a full audit of the Federal Reserve.

BACKGROUND AND NEED FOR LEGISLATION

The Federal Reserve System was created by Congress in 1913, and Congress has delegated to it the power, enumerated in Article I, Section 8 of the Constitution, to regulate the supply and value of money. The Federal Reserve struggled in its early years to achieve independence from the Executive Branch, in particular the Treasury Department, with respect to monetary policy. Independence from the Executive Branch is an essential safeguard against the manipulation of the money supply for short-term political gain. Congress also chose to impose certain restrictions on its own access to information about the Federal Reserve's actions with respect to monetary policy. These restrictions, however, hinder the ability of Congress—and ultimately the American people—to make informed decisions about the Federal Reserve's use of its congressionally delegated authority.

H.R. 459 explicitly lifts these unnecessary restrictions on Congressional access to information about the Federal Reserve, thereby restoring the ability of the Legislative Branch to conduct oversight of the central bank's exercise of its constitutionally delegated authority. The intent of this legislation is to allow Congress to make informed decisions about the Federal Reserve's use of the powers delegated to it by lawmakers by increasing the transparency and accountability of the Federal Reserve to Congress.

Increasing the transparency and accountability of the Federal Reserve to Congress has become all the more important in light of the expansion of the Federal Reserve's balance sheet since the financial crisis of 2008–2009. When Wall Street investment bank Lehman Brothers collapsed in September 2008, marking the start of the crisis, the balance sheet of the Federal Reserve stood at \$900 billion, a sum accumulated over the prior 93 years of the central bank's existence. Yet, as a result of the Federal Reserve's unprecedented emergency actions in response to the crisis, within seven weeks of the collapse of Lehman Brothers, the Federal Reserve's balance sheet had doubled to \$1.8 trillion, and within another six weeks it had reached \$2.4 trillion. Even after the crisis abated, the Federal Reserve continued to expand its balance sheet, which stood at \$3 trillion as of June 2012. This expansion occurred primarily through unconventional means of influencing the money supply, such as quantitative easing and the creation of dollar swap lines with the European Central Bank to provide assistance to failing European banks. These actions can profoundly affect the economic and fiscal health of the United States, and Congress should have greater access to information about them.

LEGISLATIVE HISTORY

The Federal Banking Agency Audit Act of 1978 (1978 Act) expanded GAO's audit access to the Federal Reserve's role in banking regulation and payment systems, while specifically prohibiting GAO from auditing activities related to four key areas: (1) Transactions for or with a foreign central bank, foreign government or international financing agency; (2) Deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations; (3) Transactions made under

the direction of the Federal Open Market Committee; and (4) Any discussions or communications among or between members of the Federal Reserve Board of Governors and officers and employees of the Federal Reserve system related to the above. Before 1978, GAO could only audit the Federal Reserve in its role as fiscal agent of the U.S. Treasury, under GAO's authority to audit the Treasury.

An amendment to the Helping Families Save Their Homes Act of 2009 allowed GAO to audit "any action taken by the Board under . . . Section 13(3) of the Federal Reserve Act with respect to a single and specific partnership or corporation." Section 13(3) refers to the emergency authorities granted to the Federal Reserve by Congress for use during "unusual and exigent circumstances." It was largely under Section 13(3) that the Federal Reserve responded to the financial crisis of 2008–2009.

A version of H.R. 459, which garnered 320 cosponsors and would have lifted the restrictions on GAO included in the 1978 Act, was included in H.R. 4173, the House-passed version of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act (P.L. 111–203), however, only expanded GAO's authority to audit certain process-oriented aspects of the Federal Reserve's emergency actions under Section 13(3). The Dodd-Frank Act left in place all of the long-standing restrictions on GAO's ability to audit the Federal Reserve included in the 1978 Act.

H.R. 459 explicitly lifts the restrictions of the 1978 Act enumerated above.

SECTION-BY-SECTION

This section-by-section pertains to the amendment in the nature of a substitute offered by Chairman Issa, which was agreed to by voice vote.

Section 1. Short title

Section 1 establishes the short title of the bill as the "Federal Reserve Transparency Act of 2012."

Section 2. Audit reform and transparency for the Board of Governors of the Federal Reserve System

Section 2 directs GAO to conduct an audit within 12 months of the date of enactment, with a report to be delivered to Congress within 90 days of completion of the audit. The audit must include a detailed description of the findings of the audit with GAO's recommendations for legislative and administrative action. Section 2 also removes the restrictions placed on GAO's ability to audit the Federal Reserve contained in 31 U.S.C. § 714. Finally, Section 2 makes a technical correction to 31 U.S.C. § 714 by removing language, included in the Dodd-Frank Act, which explicitly provided for GAO's audit of the Federal Reserve's use of certain emergency authorities, because this language would be rendered redundant by passage of the Act.

Section 3. Audit of loan file reviews required by enforcement actions

Section 3 directs GAO to conduct an audit of the files of certain residential mortgage loans in foreclosure in 2009 and 2010. The Federal Reserve has required regulated financial institutions which

service these loans to hire independent consultants to undertake reviews of these files because they were found to have been improperly reviewed prior to putting them into foreclosure. Section 3 simply requires GAO to conduct an audit of the Federal Reserve's enforcement actions with regard to these loan file reviews and to make a report to Congress within six months of the date of enactment of this Act.

EXPLANATION OF AMENDMENTS

Mr. Issa offered an amendment in the nature of a substitute which changed the due date of the audit required by the bill to 12 months from the date of enactment in order to allow GAO sufficient time to complete its work. The amendment was agreed to by voice vote.

Mr. Cummings offered and then withdrew an amendment to the Issa amendment in the nature of a substitute which would have restored the restrictions placed on GAO's ability to audit the Federal Reserve by the Dodd-Frank Act.

Mr. Cummings offered an amendment to the Issa amendment in the nature of a substitute which requires GAO to conduct an audit of loan file reviews of certain residential mortgage loans in foreclosure in 2009 and 2010. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On June 27, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 459, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill empowers the Government Accountability Office to conduct a full audit of the Federal Reserve. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 459 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 459. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 459 from the Director of Congressional Budget Office:

JULY 5, 2012.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 459, the Federal Reserve Transparency Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 459—Federal Reserve Transparency Act of 2012

H.R. 459 would direct the Government Accountability Office (GAO) to prepare audits of the Board of Governors of the Federal Reserve System and the Federal Reserve banks. The first audit would cover all of the activities of the Federal Reserve, and the second would review loan files of foreclosed homeowners.

The costs to conduct such audits and reports could vary depending on the level of detail included and the comprehensiveness of the audits. Based on information from GAO regarding the level of effort required for its previous audit of the Federal Reserve that was required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203), CBO estimates that implementing H.R. 459 would cost \$5 million over the 2013–2014 period. That cost would cover around 15 full-time and part-time GAO employees plus administrative expenses necessary to prepare the two audits required under the bill.

Enacting H.R. 459 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4155 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE**SUBTITLE I—GENERAL**

* * * * *

CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

* * * * *

SUBCHAPTER II—GENERAL DUTIES AND POWERS

* * * * *

§ 714. Audit of Financial Institutions Examination Council, Federal Reserve Board, Federal reserve banks, Federal Deposit Insurance Corporation, and Office of Comptroller of the Currency

(a) * * *

(b) Under regulations of the Comptroller General, the Comptroller General shall audit an agency, but may carry out an onsite examination of an open insured bank or bank holding company

only if the appropriate agency has consented in writing. [Audits of the Board and Federal reserve banks may not include—

[(1) transactions for or with a foreign central bank, government of a foreign country, or nonprivate international financing organization;

[(2) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations;

[(3) transactions made under the direction of the Federal Open Market Committee; or

[(4) a part of a discussion or communication among or between members of the Board and officers and employees of the Federal Reserve System related to clauses (1)–(3) of this subsection.]

* * * * *

[(f) AUDITS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

[(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

[(A) CREDIT FACILITY.—The term “credit facility” means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

[(B) COVERED TRANSACTION.—The term “covered transaction” means any open market transaction or discount window advance that meets the definition of “covered transaction” in section 11(s) of the Federal Reserve Act.

[(2) AUTHORITY FOR AUDITS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct audits, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such audits are appropriate, solely for the purposes of assessing, with respect to a credit facility or a covered transaction—

[(A) the operational integrity, accounting, financial reporting, and internal controls governing the credit facility or covered transaction;

[(B) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the relevant Federal reserve bank and taxpayers;

[(C) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

[(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction.

[(3) REPORTS AND DELAYED DISCLOSURE.—

[(A) REPORTS REQUIRED.—A report on each audit conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed.

[(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were audited and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

[(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

[(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific participants in any credit facility or covered transaction, the amounts borrowed by or transferred by or to specific participants in any credit facility or covered transaction, or identifying details regarding assets or collateral held or transferred by, under, or in connection with any credit facility or covered transaction, and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

[(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets, collateral, or transaction.

[(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility. For purposes of this clause, a credit facility shall be deemed to have terminated 24 months after the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board of Governors.

[(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

[(v) RELEASE OF COVERED TRANSACTION INFORMATION.—The Comptroller General shall release a nonredacted version of any report regarding covered transactions upon the release of the information regarding such covered transactions by the Board of Governors of the Federal Reserve System, as provided in section 11(s) of the Federal Reserve Act.]

* * * * *

MINORITY VIEWS

The United States Federal Reserve System is an independent central bank, and its monetary policy actions are not subject to approval by other entities. This independence is critical to the ability of the Board of Governors of the Federal Reserve to pursue monetary policies it considers most responsive to the nation's current economic conditions and most likely to fulfill its dual mandate of promoting maximum employment and stable prices.

The Federal Banking Agency Audit Act of 1978 established that the Federal Reserve system may be audited by the Government Accountability Office (GAO), and regular audits have been conducted since that date. However, that Act included protections now codified in 31 U.S.C. 714(b) to ensure that the Federal Reserve's monetary policymaking remains independent from outside political influence.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act expanded the types of audits GAO may conduct of the Federal Reserve, as well as the data that regularly must be disclosed to the public by the Federal Reserve.

For example, the Dodd-Frank Act required GAO to audit the emergency financial assistance provided by the Federal Reserve during the financial crisis. The Act also added a new subsection (f) to 31 U.S.C. 714 which opens the transactions and discount window operations authorized under section 11(s) of the Federal Reserve Act to audit so GAO can assess their operational integrity and internal controls, the effectiveness of security and collateral policies, the fairness to all institutions of such transactions, and the policies governing the use of third-party contractors engaged to manage such transactions.

The Dodd-Frank Act required the Federal Reserve to post on its website all GAO reports, annual financial statements, reports to Congress, and any other information "necessary or helpful to the public in understanding the accounting, financial reporting and internal controls of the Board and Federal Reserve banks." In addition, the Dodd-Frank Act required the Federal Reserve to release information regarding borrowers and counterparties participating in emergency credit facilities, discount lending programs, and open market operations, including the names of the parties, the amount borrowed by or transferred to the participant or counterparty, the interest rate or discount and the collateral pledged. The information must be released within one year of the termination of a credit facility, and within two years of a discount lending transaction or open market operation.

The Dodd-Frank Act was carefully crafted to expand transparency surrounding the Federal Reserve's operations without impeding its ability to carry out the critical responsibility of independently setting our nation's monetary policy.

In contrast, H.R. 459 would significantly alter this balance by permanently repealing the provisions in 31 U.S.C. 714(b). GAO would be permitted to audit the Federal Reserve's transactions with foreign central banks and transactions conducted under the direction of the Federal Open Market Committee. GAO also would be able to audit the Federal Reserve's internal deliberations on monetary policy matters, as well as discussions or communications Members of the Board have with each other and with staff of the Federal Reserve System regarding monetary policy.

There is significant concern that opening the Federal Reserve's monetary policy deliberations to GAO audit in this way—including audits conducted without any significant elapse of time from the point of decision—could influence how such deliberations are conducted and potentially even the policies that are chosen, thus degrading the independence of the Federal Reserve.

If all restrictions on GAO's ability to audit the Federal Reserve's deliberative processes are removed, Members of Congress could actively seek to influence the Federal Reserve's deliberations by the types and subjects of audits they request of GAO. Members of Congress could also seek to obtain the materials GAO assesses when performing its audits, including documents related to the Federal Reserve's deliberations.

The Oversight Committee has held no hearings on this legislation and has heard from no witnesses regarding its potential consequences. Moving forward on this bill without even calling a single witness from the Federal Reserve is a misguided approach that is likely to result in many unforeseen and potentially damaging consequences.

ELIJAH E. CUMMINGS.

